

Serial No. 10/808,683

Page 6 of 9

R e m a r k s

Claims 1-20 are pending in the application.

Claims 1-5 and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Combs et al. (U.S. Patent No. 6,751,417B1, hereinafter "Combs").

Claims 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Combs.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the

Serial No. 10/808,683

Page 7 of 9

original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 35 U.S.C. 102

Claims 1-5 and 16-20

Claims 1-5 and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Combs. The rejection is traversed.

Combs does not teach each and every element recited in independent claims 1, 16, and 18. The invention claims "transmitting services to said customer premises using an end-to-end passive downstream path" (through passive splitter/combiner 140) and "receiving services from said customer premises using an active optical upstream path" (through active switch 122). Combs, to the contrary, *only* teaches a single path active network, where all traffic between Head-End 102 and End-Users 112 must pass through active components Mux-Node 104, and Mini-Fiber Node 108. A further difference between architectures, is that the claimed invention provides direct connections between splitter/combiner 140 (in the passive downstream path) and switch 122 (in the active upstream path) to customer premises 130_{1-N}, but Combs contrarily teaches connection to the end users 112, by way of taps 110 into Mini-Fiber nodes 108. Hence, Combs neither teaches the two distinct network paths (active and passive) of the claimed invention, nor are the components in Combs even arranged in a similar fashion to those in the invention.

Therefore, Combs fails to disclose each and every element of Applicant's claimed invention, and independent claims 1, 16, and 18. Since dependent claims 2-5, 17, and 19-20 depend from the respective independent claims and include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Combs under 35 U.S.C. 102(e).

Accordingly, claims 1-5 and 16-20 are patentable under 35 U.S.C. 102(e) over Combs. Therefore, the rejection should be withdrawn.

Serial No. 10/808,683

Page 8 of 9

Rejection Under 35 U.S.C. 103(a)Claims 6-15

Claims 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Combs. The rejection is traversed.

For at least the reasons discussed above in response to the Examiner's 35 U.S.C. 102(e) rejection of claims 1, 16 and 18, Combs fails to teach or suggest Applicant's invention as a whole. Specifically, Combs does not teach the "passive optical path" of independent claim 8, because as stated above, Combs *only* teaches a single path active network, where all traffic between Head-End 102 and End-Users 112 must pass through active components Mux-Node 104, and Mini-Fiber Node 108. Therefore, in addition to Combs not even teaching a "passive optical path," nothing in Combs would suggest utilizing one either. Hence, independent claim 8 is not obvious in view of Combs, and is patentable under 35 U.S.C. 103(a).

Since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Combs under 35 U.S.C. 103.

Accordingly, dependent claims 6-7 and 9-15, which depend directly or indirectly from claims 1 or 8, are also patentable under 35 U.S.C. 103(a) over Combs. Therefore, the rejection should be withdrawn.

Secondary References

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicant's disclosure than the primary references cited in the Office Action. Therefore, Applicant believes that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

Serial No. 10/808,683

Page 9 of 9

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: 10/25/07

Eamon J. Wall
Registration No. 39,414
Attorney for Applicant(s)

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808

598196-1